

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 21, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NICHOLAS A. FUENTES, III,

Petitioner,

v.

JAMES KEY,

Respondent.

NO: 2:19-CV-416-RMP

ORDER GRANTING MOTION TO
SUBSTITUTE PROPER
RESPONDENT AND DIRECTING
SERVICE OF FIRST AMENDED
PETITION

*****ACTION REQUIRED*****

BEFORE THE COURT is Petitioner's First Amended Petition, naming Maggie Miller-Stout as Respondent, ECF No. 8. Petitioner Nicholas A. Fuentes, III, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se* and *in forma pauperis*. Respondent has not been served.

Petitioner subsequently filed a document identifying James Key as his current custodian, which the Court has liberally construed as a Motion to Substitute the Proper Respondent. ECF No. 9. That Motion is **GRANTED**. The District

ORDER GRANTING MOTION TO SUBSTITUTE PROPER RESPONDENT
AND DIRECTING SERVICE OF FIRST AMENDED PETITION -- 1

1 Court Clerk shall **TERMINATE** Respondents State of Washington and Maggie
2 Miller-Stout and **ADD** James Key.

3 Petitioner is challenging his 2017 Spokane County jury conviction for
4 second degree assault. ECF No. 8 at 1. By Order filed February 5, 2020, the Court
5 advised Petitioner of the deficiencies of his initial petition and directed him to
6 amend. ECF No. 7. Specifically, the Court directed Petitioner to clearly and
7 concisely present only those grounds for federal habeas relief which had been
8 exhausted to the Washington State Supreme Court. *Id.* at 6.

9 In the First Amended Petition, Mr. Fuentes presents a single ground for
10 federal habeas relief. ECF No. 8 at 5. He asserts that his Fifth and Fourteenth
11 Amendment rights were violated when a witness for the state was “brought in at
12 the last minute,” which resulted in a continuance of Petitioner’s trial to which he
13 did not consent. *Id.* Petitioner states that he pursued this claim in his direct
14 appeal. *Id.* at 6. Liberally construing the First Amended Petition in the light most
15 favorable to Petitioner, the Court finds it appropriate to direct Petitioner Key to
16 respond.

17 Accordingly, **IT IS ORDERED:**

18 1. Pursuant to Rule 4, Rules Governing Section 2254 Cases in the United
19 States District Courts, the District Court Clerk shall provide by electronic means a
20 copy of the First Amended Petition, ECF No. 8, and this Order to the Attorney
21 General for the State of Washington, Corrections Division.

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4. The Clerk of Court shall set a case management deadline **ninety (90)** days after the date of this Order.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order and provide a copy to Petitioner.

DATED May 21, 2020.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge